



**House Committee on Regulatory Reform
Testimony – E-Cigarettes**

March 11, 2014

Dear Representatives:

A key question anyone should ask when considering proposed legislation is who does this bill benefit? In the case of four e-cigarette and other vapor device bills under consideration in Michigan, SB 667, SB 668, HB 4997, and HB 5007, the answer is the tobacco industry. The American Cancer Society Cancer Action Network, American Heart Association, American Lung Association and many other health organizations, oppose these bills and with good reason.

Sure, on the surface the legislation seems to work against Big Tobacco. It supposedly just prevents minors from buying e-cigarettes and other vapor devices. But look closer and you'll see something different.

The tobacco industry's bottom line stands to gain by setting up a precedent where e-cigarettes and other vapor devices are not regulated the way that tobacco products are. It could exempt e-cigarettes and other vapor devices from current and future tobacco control laws by creating a special class of products within state law.

Do you think the tobacco industry is suddenly concerned with public health? We seriously doubt it. The tobacco industry has a long history of supporting youth-access restrictions in an attempt to avoid additional regulations that have a proven track record of reducing youth tobacco use. The tobacco industry is regularly developing new products to attract new business. As you will see in the Wall Street Journal article attached, Philip Morris International is planning on test marketing a new hybrid e-cigarette/cigarette in the near future. Does it make sense to open the Youth Tobacco Act when that happens to write a separate definition for those products too? They sound like they will most certainly contain tobacco so why not stay a step ahead of the industry and modify the definition of tobacco products to include anything that may emerge as a new tobacco delivery device?

The Battle Creek Enquirer said it best in an editorial last week, "The sellers of addictive substances will try to convince you otherwise, but they're in the business of getting people hooked on their products. If they say they support legislation that would restrict that business, it's wise to be skeptical."

Let us be clear, we support keeping e-cigarettes and other vapor devices that may contain nicotine out of the hands of kids but it must be done so in a way that it protects public health and not the tobacco

industry. Representative Haines introduced a bill last week, HB 5393, that would accomplish this goal. HB 5393 prohibits the sale of e-cigarettes to minors by treating them as what they are – tobacco products. E-cigarettes often deliver nicotine, which is derived from tobacco. There is general agreement among scientists in the field that, in the short run, most e-cigarettes are almost certainly less harmful than combusted cigarettes. But, there is a lack of research as to the potential harms of e-cigarettes, especially in the long term.

The leading health organizations in this state, in addition to ours: the Michigan Health & Hospital Association, Michigan State Medical Society, Michigan Osteopathic Association, and the Michigan Association for Local Public Health all support HB 5393.

To clear up some confusion, all five of the bills that have been introduced amend the Youth Tobacco Act and that alone. That means that any definition change or addition applies only to the age of sale and purchase requirement. None of the bills would change the current tobacco tax law or Dr. Ron Davis Smokefree Air Law. To do that would require amending different parts of the law.

Our organizations have serious concerns about the potential public health effects of e-cigarettes and significant additional research is needed on these products and how they are used. Until more research is conducted and the FDA issues regulations, we strongly recommend that Michigan treat e-cigarettes and other vapor devices that may contain nicotine like other tobacco products in any legislation to prohibit youth access to e-cigarettes.

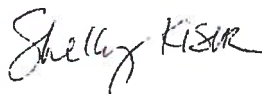
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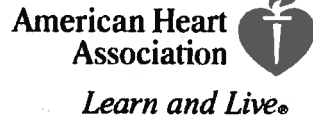
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March 5, 2014

The Honorable Hugh Crawford, Chair
House Committee on Regulatory Reform
State Capitol
Lansing, MI 48909

Re: Support HB 5393

Dear Chairman Crawford:

We are writing to ask for your support of the bill that Representative Haines recently introduced, HB 5393, regarding the definition of "tobacco product." We believe this definition is an appropriate definition of "tobacco product" and works to keep tobacco products out of the hands of kids. There is no reason e-cigarettes should be treated differently than other tobacco products.

Forty Attorneys General from across the country, including Michigan Attorney General Bill Schuette, submitted a letter to the FDA on September 24, 2013, calling on them "to regulate electronic cigarettes as 'tobacco products'.....as they are products 'made or derived from tobacco'".

The e-cigarette industry wants everyone to believe that their products are a safe alternative to smoking; however, there is no reliable research to support this claim. The use of e-cigarettes is increasing, including among youth. The e-cigarette industry is using a number of marketing techniques originally employed by the cigarette companies to addict youth, including the use of candy- and fruit-flavors. E-cigarettes come in cotton candy, gummy bear, bubble gum flavors, Atomic Fireball, orange soda, as well as grape, apple and strawberry. Earlier this month, the Centers for Disease Control and Prevention (CDC) released alarming new data about e-cigarette use among youth. In just one year (2011 to 2012), the number of students in grades 6-12 reporting having ever used an e-cigarette doubled from 3.3 percent to 6.8 percent. Recent use of e-cigarettes among 6-12 year olds increased from 1.1 percent to 2.1 percent. Adults are also reporting greater use of e-cigarettes.

The Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act), which passed the Congress with overwhelming bipartisan majorities and was signed into law on June 22, 2009, gave the FDA immediate authority over cigarettes, smokeless and roll-your-own tobacco. It also gave the authority to the Secretary of Health and Human Services to deem other tobacco products subject to FDA's jurisdiction. Under this provision, the FDA has stated it plans to regulate e-cigarettes. Until this occurs, there is no federal oversight of these products or restrictions in place to protect the public health against potential risks posed by these products, particularly to the health of our children.

Our organizations have serious concerns about the potential public health effects of e-cigarettes and significant additional research is needed on these products and how they are used. Until more research is conducted and the FDA issues regulations, we strongly recommend Michigan treat e-cigarettes like all other tobacco products. With the intent of keeping e-cigarettes out of the hands of children, we ask that you support the use of the definition in HB 5393, which states:

"Tobacco product" means any product containing, made, or derived from tobacco, nicotine or other similar substance that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to: cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, snus, or electronic cigarettes, electronic cigars, electronic pipes, or other similar products that rely on vaporization or aerosolization. "Tobacco product" includes any component part of a tobacco product, whether or not they are sold separately. "Tobacco product" does not include any product specifically approved by the U.S. Food and Drug Administration for sale as a tobacco cessation product that is being marketed and sold solely for the approved purpose.

Our organizations will continue to prioritize reducing the terrible burden caused by cigarettes and other tobacco products by implementing policies outlined in the Centers for Disease Control and Prevention's Best Practices for Comprehensive Tobacco Control Programs. If you have questions, please contact Judy Stewart at judy.stewart@cancer.org or 248-259-1369.

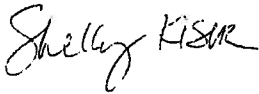
Most respectfully,



Judy Stewart
Director, State Government Relations
American Cancer Society Cancer Action Network




Katherine Knoll
Regional Vice President of Advocacy
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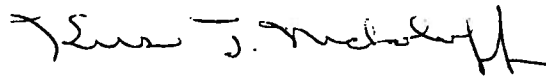
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Frequently Asked Questions about E-Cigarettes

What is an "E-Cigarette"?

Electronic cigarettes, or e-cigarettes, are typically battery-operated products designed to deliver a heated solution, or vapor, of nicotine and other chemicals to the user. E-cigarettes can be disposable or consist of a rechargeable, battery-operated heating element; a replaceable or refillable cartridge that may contain nicotine, flavoring agents, and other chemicals (sometimes called "e-juices"); and an atomizer that uses heat to convert the contents of the cartridge into a vapor that is inhaled by the user. Some e-cigarettes are designed to look like cigarettes, cigars, pipes, or hookahs.

Do e-cigarettes contain tobacco?

It is unclear. Some e-cigarettes may contain nicotine derived from tobacco, or nicotine derived from other chemicals. Clearly, more research is necessary to determine the chemicals contained in these products and the long-term health impacts.

Are e-cigarettes safe?

There are more than 250 types of e-cigarettes on the market today and products vary considerably by ingredients, quality control and assurance, and ability to reliably deliver nicotine to users. E-cigarette manufacturers claim the ingredients are "safe," but e-cigarettes have not been subject to thorough, independent testing so users cannot be sure of what they are actually inhaling.

Currently, only a limited number of studies have examined the contents of e-cigarette vapor. Some studies have found the vapor to contain only propylene glycol, nicotine, and flavorings, and other studies found the vapor contained heavy metals, volatile organic compounds and tobacco-specific nitrosamines, among other harmful ingredients.

The health effects of e-cigarettes – especially the longer-term effects – are scientifically uncertain. There is general agreement among scientists in the field that, in the short run, most e-cigarettes are almost certainly less harmful than combusted cigarettes. But there are still serious questions about the safety of inhaling the substances in e-cigarette vapor. Without federal regulation, there is no sure way for e-cigarette users to know what they are consuming and the extent of potential risk.

Do e-cigarettes help cigarette smokers quit or smoke less?

Questions exist about whether e-cigarettes are an effective cessation aid for cigarettes, or whether reducing the number of cigarettes smoked – by using a combination of both e-cigarettes and cigarettes – reduces an individual's risk for premature death and disease. Some smokers report they have used e-cigarettes as a way to reduce the harm from or quit cigarettes, but there is a lack of evidence to date demonstrating that e-cigarettes are either a wholly safe product or an effective cessation aid. There have been several randomized controlled trials of e-cigarettes as a smoking cessation aid,

the most extensive of which reported that e-cigarettes were at least as effective as the nicotine patch. Other studies that have looked at the potential of e-cigarettes as a cessation aid have found that, while e-cigarettes may aid in reducing the number of cigarettes smoked, there was no significant difference between smokers who used e-cigarettes and smokers who did not use e-cigarettes in terms of quitting cigarettes entirely.

Additional research is needed on the short and long term health effects of e-cigarette use among cigarettes smokers and nonsmokers, comparison of e-cigarettes to the well-known and documented health dangers of combusted cigarette use, and e-cigarettes' effectiveness as quitting aids. This is particularly necessary in light of increased e-cigarette use among youth.

Is e-cigarette use on the rise?

Since the introduction of e-cigarettes to the U.S. market approximately 7 years ago, the marketing and use of these products have increased. A study from the Centers for Disease Control and Prevention (CDC) found that e-cigarette experimentation increased from 3.3 to 6.8 percent among middle and high school students between 2011 and 2012, resulting in an estimated 1.78 million youth who have tried e-cigarettes. A study looking at data from the previous year (2010-2011) found an increase in the number of adults who have ever used e-cigarettes, from 3.3 to 6.2 percent.[vii] In 2011, 21.2 percent of current smokers had ever tried e-cigarettes, as compared to 7.4 percent of former smokers and 1.3 percent of never smokers.

How are e-cigarettes marketed?

E-cigarettes are widely available and often are not subject to the legal restrictions to which cigarettes and other tobacco products are required to adhere. E-cigarettes are advertised on television, radio, online, in print magazines, including those with high youth readership, and at sports and music events. Particularly troublesome is that some e-cigarette manufacturers are using the same marketing practices effectively used by the tobacco companies to target youth and mislead consumers about the potential health impact of their products. These practices include celebrity endorsements, sports and musical sponsorships, use of images of e-cigarettes as rebellious, sexy and cool and the use of flavorings in their products.[viii] Additionally, e-cigarettes are advertised as a way to "legally smoke" or "take back your freedom" where smoke-free laws exist in states and localities. Some e-cigarette manufacturers claim e-cigarettes are a safe, less harmful alternative to cigarettes despite the lack of regulation to ensure their safety or health impact.

Is the FDA regulating e-cigarettes?

Currently, no U.S. federal agency regulates e-cigarettes. In 2010, a federal court ruled that e-cigarettes cannot be regulated as drugs or devices unless marketed for therapeutic purposes (ex. cessation); in the absence of a therapeutic claim, e-cigarettes can be regulated as tobacco products. The Food and Drug Administration (FDA) has stated its intent to assert the authority of the Center for Tobacco Products to regulate all tobacco products, but a rule has yet to be issued. The FDA originally intended to

regulate e-cigarettes as a drug-delivery device, similar to nicotine replacement therapies, which is what led to the 2010 court challenge.

How should e-cigarettes be regulated?

E-cigarettes should be subject to evidence-based state and local tobacco control laws, which means:

- Must be 18 or older to purchase;
- Regulatory safeguards, such as the use of licensed retailers, wholesalers, and distributors etc.
- Free samples should be prohibited
- Vending machine sales should be prohibited
- Point of purchase restrictions on tobacco should apply to e-cigarettes
- The sale of flavored products appealing to kids should be restricted

Defining e-cigarettes and all novelty tobacco products as tobacco products in statute will ensure that e-cigarettes are covered under all evidence-based state and local tobacco control laws, including youth access laws that prohibit the sale of tobacco products to kids.

Who supports regulating e-cigarettes?

Michigan Attorney General Bill Schuette and 40 other state's Attorneys General submitted a letter to the FDA calling on the FDA to regulate e-cigarettes as a tobacco product. The letter harshly criticized the advertising and flavoring techniques used by e-cigarette manufacturers as targeting youth.

The American Cancer Society Cancer Action Network, American Heart Association and the American Lung Association have asked the President and the FDA to issue a rule to regulate all tobacco products, including e-cigarettes, without further delay.

There is broad agreement in the public health and health community on the need for a wide-ranging, independent research agenda on e-cigarettes and other novel products. FDA's assertion of authority over all tobacco products, including e-cigarettes, is fundamental to the development and implementation of that agenda, but others in the scientific community must also address important research questions. Studies should assess product safety, use, marketing strategies, health impact, and reduced risk of death and disease and should ensure all potentially affected populations are adequately involved. A comprehensive research agenda should also include effectiveness of interventions to influence individuals' use of e-cigarettes, once safety and risk are determined, and surveillance measures to monitor use.

Michigan E-Cigarette Proposals

HB 5393	HB 4997, HB 5007, SB 667, SB 668
Supported by the state's leading health organizations including American Cancer Society Cancer Action Network, American Heart Association, American Lung Association, Michigan State Medical Society, Michigan Health & Hospital Association, Michigan Osteopathic Association, and Michigan Association for Local Public Health	Supported by Big Tobacco
Modernizes the definition of tobacco products to reflect new products including all products that are nicotine (tobacco derived) delivery devices with the exception of FDA- approved cessation products	Defines vapor products and alternative nicotine products separately from tobacco products but yet they may still contain tobacco or be derived from tobacco
Prohibits the sale of e-cigarettes, and other vapor products , to minors including all components	These bills MAY prohibit the sale of some e-cigarette or other vapor devices to minors, but may not prohibit kids from buying components of e-cigarettes like the refillable bottles
Requires child-proof containers for refillable cartridges and bottles for e-cigarettes and other vapor products	Does NOT require child- proof packaging for refillable cartridges and bottles for e-cigarettes and other vapor products

**** All five of the bills that have been introduced amend the Youth Tobacco Act. Any definition changes or additions apply only to the age of sale and purchase requirement. None of the bills would change the current tobacco tax law or Dr. Ron Davis Smokefree Air Law. To do that would require amending different parts of the law.**

CAMPAIGN FOR TOBACCO-FREE KIDS

Electronic Cigarettes: Peril or Promise?

The Need for Common Sense Regulation

Danny McGoldrick
Campaign for Tobacco-Free Kids
March 4, 2014
Lansing, MI

Campaign for Tobacco-Free Kids www.captobaccofreekids.org

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E-Cigarettes

So what do we know?

Campaign for Tobacco-Free Kids www.captobaccofreekids.org

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Big Picture Points

- Tobacco use takes a terrible toll on Michigan's health and economy.
- We know what to do to reduce tobacco use in Michigan, and we need to do more of it – tobacco taxes, prevention funding.
- Could e-cigarettes play a role? The science is far from clear.
 - Harm
 - Quitting
 - Initiation
- Regulation the right way is critical to ensure e-cigarettes do not undermine progress as the science around them develops
- Regulation must be done on public health terms – not tobacco industry terms

Campaign for Tobacco-Free Kids www.captobaccofreekids.org

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BEFORE	NOW

Campaign for Tobacco-Free Kids www.captobaccofreekids.org

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Key Questions for E-cigarettes

- Are e-cigarettes less harmful to the individual than cigarettes? Even if less harmful, could be offset by:
 - Keeping smokers smoking (bridging and/or using unproven method)
 - Attracting youth users who progress to conventional cigarettes
 - Luring former smokers back into smoking
- Could do more harm than good; have to look at impact on population as whole, not just individual

Campaign for Tobacco-Free Kids www.captobaccofreekids.org

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Harm

- E-cigarettes are likely less harmful than conventional cigarettes
- E-cigarettes are likely not harm-less to the user or non-user (secondhand vapor)
 - Nicotine is addictive
 - Liquid and vapor contain harmful ingredients, although in smaller quantities
 - Long term impact of use is unknown
 - Some product warnings say inhaled nicotine is "very toxic"

Campaign for Tobacco-Free Kids www.captobaccofreekids.org

Warning on MarkTen Electronic Cigarettes (Altria)

WARNING: This product is not a smoking cessation product and has not been tested on such. This product is intended for use by persons of legal age or older, and not by children, women who are pregnant or breast feeding, or persons with or at risk of heart disease, high blood pressure, diabetes, or taking medication for depression or asthma. Nicotine is addictive and habit forming, and it is very toxic for infants. In contrast with the risks, or if used correctly, Nicotine can increase your heart rate and blood pressure and cause dizziness, nausea, and stomach pain. Inhalation of this product may aggravate existing respiratory conditions. Inhalation of the non-vegetarian conventional ingredients in the cartridges can be poisonous.

CA Proposition 65 WARNING: This product contains chemicals, a chemical known to the State of California to cause birth defects or other reproductive harm.

Mark Ten Product Guide: http://www.altria.com/MarkTen_Product_Information_Default

Marketing

- E-cigarette marketing closely parallels tobacco marketing that hooked generations of teens
 - Back on television
 - Use of flavors
 - Sports and entertainment sponsorships
 - Celebrity endorsements
 - Themes of glamour, rebellion, and sex

Quitting

"There is currently no conclusive scientific evidence that e-cigarettes promote long-term cessation ..." (CDC Researchers in peer-reviewed journal, *Nicotine & Tobacco Research*, 2013)

Lots of anecdotes but limited studies on e-cigarettes and cessation.

- Some show e-cigarette users no more likely to quit than non-users
- Some show e-cigarette users less likely to quit
- Some show e-cigarettes have comparable quit rates to NRT patch – but patch is approved as both safe and effective by FDA
- Many e-cigarette users are dual users

E-Cigarettes Marketing Mimics the Worst of Cigarette Marketing

TV Ads, Kid Friendly Flavors, Music Sponsorships, Celebrity Endorsements, NASCAR Car Sponsorships, Branded Items, Cartoons, "Cigarette Girls", Countertop Displays

Initiation?

- National trends, 2011-2012:
 - 6th-12th grades: ever use of e-cigarettes increased 3.3% to 6.8% (more than doubled)
 - Estimated 1.78 million youth who had used e-cigarettes in 2012
 - High school students: ever-use increased 4.7% to 10%
 - Dual use: 76% of middle and high school students who had used an e-cigarette in the past 30 days had also smoked conventional cigarettes in the same time period

Kid Friendly Flavors

Glamour/Celebrity Endorsements



"Responsible" Marketing?

Campaign for Tobacco-Free Kids

Introducing the blu eCigs Starter Pack with Jenny McCarthy

Responsible e-cigarette manufacturers, including blu eCigs, do not market to youth. Lorillard understands the sensitivity associated with advertising and marketing campaign and their potential influence on minors. For this reason, blu eCigs is actively and effectively ensuring that its advertising is directed at adult smokers."

Lorillard Letter to FDA, October 23, 2013

Copyright for Tobacco-Free Kids

Rebellion

Campaign for Tobacco-Free Kids

TAKE BACK YOUR FREEDOM

Dear Smoking Ban

blu eCIGARETTES

blucigs.com

Copyright for Tobacco-Free Kids

Regulation - Federal

- Not regulated at federal level unless a therapeutic claim (e.g., cessation) is made
- FDA attempted to regulate as drug but e-cigarette companies sued - said they were a tobacco product
- FDA's Center for Tobacco Products has submitted rule but has to be reviewed, opened for comment, finalized, and probably litigated

Rebellion

Campaign for Tobacco-Free Kids

DEAR SMOKING BAN,

blu eCIGARETTES

blucigs.com

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Youth Access – Age of Sale

- Necessary but not sufficient for reducing tobacco use
- Need to do in a way that does not make further regulation harder when needed
- Tobacco companies have long used youth access to stop further regulation and even to pass bad legislation (e.g., preemption)
- E-cig companies approaching states all over country to give them special treatment

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History of Using Youth Access to Avoid Regulation

"We have two objectives for the ITL [It's the Law] program – 1) to provide an alternative to legislative/mandated policy actions; and 2) to improve PM's image regarding the youth issue."
Philip Morris, 1994

"If we can frame proactive legislation or other kinds of action on the Youth Access issue...we will be protecting our industry on into the future."
Philip Morris, 1995

"[I]f we don't do something fast to project that sense of industry responsibility regarding the youth access issue, we are going to be looking at severe marketing restrictions in a very short time."
Philip Morris, 1995

Children for Tobacco-Free Kids www.childrenfortobacco-freekids.org

CAMPAIGN for TOBACCO-FREE Kids

Public Health v. Industry Approach to Youth Access

- Public Health Approach – Revise definition of tobacco products to include all tobacco products - including e-cigarettes.
- Industry Approach – Create separate category for e-cigarettes to limit current or future regulation

Children for Tobacco-Free Kids www.childrenfortobacco-freekids.org

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Why Does This Matter?

- The science is unclear on the benefits of e-cigarettes in terms of health, quitting, initiation, etc.
- E-cigs are clearly being marketed in ways that encourage youth use and discourage cessation
- The industry's long history of using youth access to avoid regulation
- The need to retain as much authority and flexibility as possible as the science emerges and the products and marketing evolve

Children for Tobacco-Free Kids www.childrenfortobacco-freekids.org



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of Attorneys General

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September 24, 2013

The Honorable Margaret Hamburg, Commissioner
U.S. Food and Drug Administration
10903 New Hampshire Avenue
Silver Spring, MD 20993

Re: FDA Regulation of E-Cigarettes

Dear Commissioner Hamburg,

The undersigned Attorneys General write to urge the Food and Drug Administration (FDA) to take all available measures to meet the FDA's stated deadline of October 31, 2013, to issue proposed regulations that will address the advertising, ingredients, and sale to minors of electronic cigarettes (also known as e-cigarettes).

State Attorneys General have long fought to protect their States' citizens, particularly youth, from the dangers of tobacco products. For example, every State Attorney General sued the major cigarette companies for the harm their products caused. With the protection of our States' citizens again in mind, the undersigned Attorneys General write to highlight the need for immediate regulatory oversight of e-cigarettes, an increasingly widespread, addictive product.

As you know, e-cigarettes are battery-operated products designed to deliver nicotine to the user by heating liquid nicotine, derived from tobacco plants, along with flavors and other chemicals, into a vapor that the user inhales. The nicotine found in e-cigarettes is highly addictive, has immediate bio-chemical effects on the brain and body at any dosage, and is toxic in high doses.¹

E-Cigarette Sales are Growing Exponentially Using Marketing that Includes Television

Sales of e-cigarettes have grown rapidly in the United States, and after doubling every year since 2008, sales in 2013 are now accelerating even faster and projected to reach \$1.7 billion.² The cost of e-cigarettes has fallen

¹ U.S. Surgeon General, U.S. Department of Health and Human Services, *The Health Consequences of Smoking: Nicotine Addiction* (1988); Emergency Response Safety and Health Database, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, http://www.cdc.gov/niosh/ershdb/EmergencyResponseCard_29750028.html

² Compare Josh Sanburn, *Can Electronic Cigarettes Challenge Big Tobacco?*, Time.com, Jan. 8, 2013, available at <http://business.time.com/2013/01/08/can-electronic-cigarettes-challenge-big-tobacco/>, (estimating 2013 sales at \$1 billion), with Stuart Elliot, *E-Cigarette Makers' Ads Echo Tobacco's Heyday*, New York Times, Aug. 29, 2013, available at <http://www.nytimes.com/2013/08/30/business/media/e-cigarette-makers-ads-echo-tobacco-heyday.html>, (estimating 2013 sales at \$1.7 billion).

dramatically, as well, making them more affordable, and thus more attractive to young people. Unlike traditional tobacco products, there are no federal age restrictions that would prevent children from obtaining e-cigarettes, nor are there any advertising restrictions.

Along with the growth of e-cigarette sales, there has also been a growth of e-cigarette advertising over the past year. For example, in this year's Super Bowl broadcast, NJOY e-cigarettes purchased a 30-second television advertisement slot which reached at least 10 million viewers in certain markets and reportedly translated into a dramatic 30-40% increase in sales.³ The advertisement depicted an attractive man smoking an e-cigarette that looked just like a real cigarette. Since then, advertisements for e-cigarettes have regularly appeared on primetime television, making it easier for those advertisements to reach children. Moreover, e-cigarettes are not being marketed as smoking cessation devices, but rather as recreational alternatives to real cigarettes. Consumers are led to believe that e-cigarettes are a safe alternative to cigarettes, despite the fact that they are addictive, and there is no regulatory oversight ensuring the safety of the ingredients in e-cigarettes.

E-Cigarettes Appeal to Youth

E-cigarettes contain fruit and candy flavors -- such as cherry, chocolate, gummy bear, and bubble gum -- that are appealing to youth. The FDA has banned such flavors from cigarettes and should take the same action regarding e-cigarettes. E-cigarettes and refills of the liquid nicotine solution used with e-cigarettes can easily be ordered online without age verification. By intentional use or mistaken ingestion from the non-child resistant containers, e-cigarettes and liquid nicotine refills can deliver dangerously high doses of liquid nicotine to youth.

In addition to flavors, e-cigarette manufacturers, such as eJuiceMonkeys.com and Magic Puff City E-cigarettes, use cartoon monkeys to sell e-cigarettes,⁴ even though for many years, the major manufacturers of traditional cigarettes have been banned from using cartoons to advertise. Finally, e-cigarette manufacturers, such as White Cloud Cigarettes, offer reusable e-cigarette "skins" -- known as Vapor Jackets -- that are intended to make the e-cigarette desirable or fashionable and are available in a variety of patterns that appeal to children, one of which uses images from the popular video game, Angry Birds.⁵

Further, data from the 2011 and 2012 National Youth Tobacco Surveys (conducted by the Centers for Disease Control and Prevention) show that e-cigarette use among students doubled in the last year. Specifically, one in 10 high school students reported that they had tried an e-cigarette in the last year -- up from one in 20 in 2011, and 1.8 million middle and high school students said they had tried e-cigarettes in 2012.⁶ The increased usage among young people

³ Benjamin Wallace, *Smoke Without Fire*, New York Magazine, April 28, 2013, available at <http://nymag.com/news/features/e-cigarettes-2013-5/>.

⁴ See <http://ejuicemonkeys.com/> and <http://cityecigarettes.com/>

⁵ See <http://www.whitecloudelroniccigarettes.com/accessories/vapor-jackets/>

⁶ Catherine Corey, *Notes from the Field: Electronic Cigarette Use Among Middle and High School Students – United States, 2011-2012*, Centers for Disease Control and Prevention Morbidity and Mortality Weekly Report, September 6, 2013, available at http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6235a6.htm?s_cid=mm6235a6_w

echoes the growth among adult users, and researchers indicated that aggressive marketing campaigns, in part, drove the increase.⁷

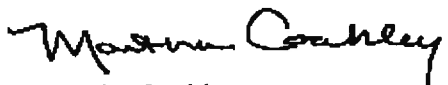
The FDA has Authority to Regulate E-cigarettes and Protect the Public

In the Tobacco Control Act, Congress recognized that nicotine is an addictive drug, and virtually all new users of tobacco products are under the age of eighteen and are therefore too young to legally purchase such products. Congress further found that tobacco advertising and marketing contributes significantly to the teenage use of nicotine-containing tobacco products. To help prevent children from using tobacco products, the Tobacco Control Act imposed restrictions on advertising and marketing to youth. These restrictions should be applied to e-cigarettes, as well, to safeguard children from nicotine addiction and other potential health effects of e-cigarettes.

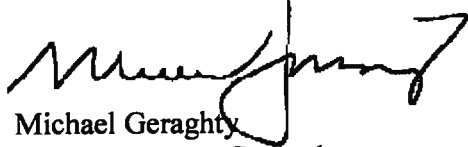
The FDA has authority to regulate electronic cigarettes as “tobacco products” under the Tobacco Control Act, as they are products “made or derived from tobacco” that are not a “drug,” “device,” or combination product. Case law, such as *Sottera, Inc. v. Food & Drug Administration*, 627 F.3d 891 (D.C. Cir. 2010), further supports the contention that e-cigarettes are “made or derived from tobacco” and can be regulated as “tobacco products” under the Tobacco Control Act.

We ask the FDA to move quickly to ensure that all tobacco products are tested and regulated to ensure that companies do not continue to sell or advertise to our nation’s youth.

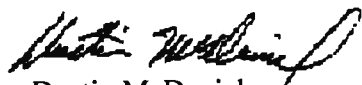
Very respectfully yours,



Martha Coakley
Massachusetts Attorney General



Michael Geraghty
Alaska Attorney General



Dustin McDaniel
Arkansas Attorney General



Mike DeWine
Ohio Attorney General

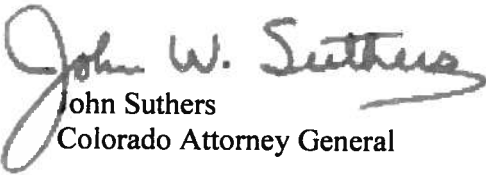



Tom Horne
Arizona Attorney General




Kamala Harris
California Attorney General


⁷ Sabrina Tavernise, *Rise Is Seen in Students Who Use E-Cigarettes*, New York Times, September 5, 2013, available at <http://www.nytimes.com/2013/09/06/health/e-cigarette-use-doubles-among-students-survey-shows.html>

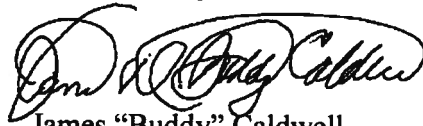

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Colorado Attorney General

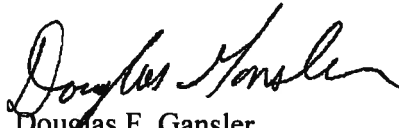

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Hawaii Attorney General


Lisa Madigan
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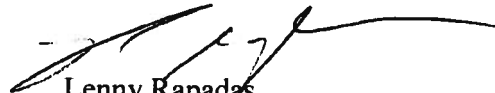

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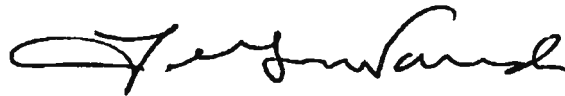

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Maryland Attorney General

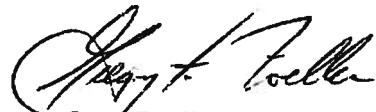

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Minnesota Attorney General



Chris Koster
Missouri Attorney General



George Jepsen
Connecticut Attorney General



Lenny Rapadas
Guam Attorney General

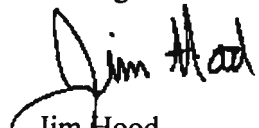

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Bill Schuette
Michigan Attorney General


Jim Hood
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Tim Fox
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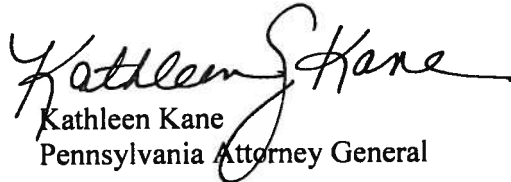
Catherine Cortez Masto
Nevada Attorney General



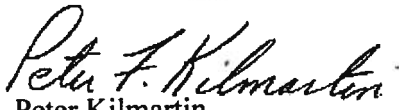
Gary King
New Mexico Attorney General



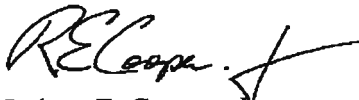
Roy Cooper
North Carolina Attorney General



Kathleen Kane
Pennsylvania Attorney General



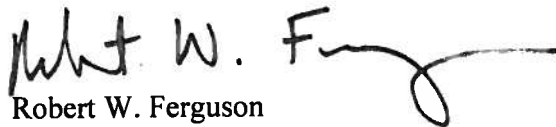
Peter Kilmartin
Rhode Island Attorney General



Robert E. Cooper, Jr.
Tennessee Attorney General



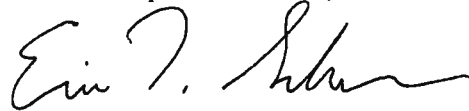
William H. Sorrell
Vermont Attorney General



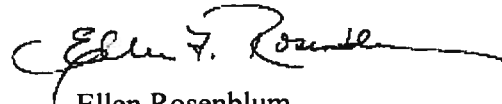
Robert W. Ferguson
Washington Attorney General



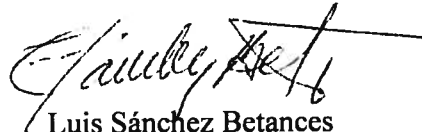
Joseph Foster
New Hampshire Attorney General



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New York Attorney General



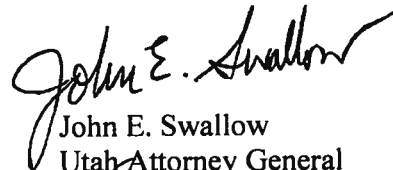
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THE WALL STREET JOURNAL

WSJ.com

March 3, 2014, 8:28 PM ET

Can Big Tobacco Grow Again?

By Tom Gara



Getty Images

Last Friday afternoon, in a hotel lounge in Midtown Manhattan, I saw what one of the world's biggest tobacco companies says could be central to its growth in the coming years.

It wasn't a cigarette as we know it—those products, deadly for their users and detested by regulators and health experts, are destined for a long and inevitable decline. And it wasn't an electronic cigarette, the trendy new upstarts in the nicotine business.

Instead, it was a hybrid of the two—a black, cigarette-shaped tube containing a battery and electronics. Into one end of the tube, users plug what looks like a miniature cigarette, a couple of inches long, paper filled with real tobacco.

The user “lights” the cigarette by pressing a button, activating a mechanism that heats the tobacco to a temperature high enough to turn its nicotine into vapor, but not high enough to produce smoke.

The user then puffs away, on what Marlboro-maker Philip Morris International Inc. refers to as a “potentially reduced-risk product”—careful language to describe the devices that it hopes regulators will approve for sale in Europe, and eventually in the U.S.

If all goes to plan, they will be available in some test markets before the end of 2014, with a wider rollout next year.

"Reduced" risk is the key word here—there is no such thing as a safe way to inhale nicotine, the company acknowledges. And health campaigners, who have spent decades battling the tobacco industry, worry that new, less risky products like e-cigarettes will act as a Trojan horse, getting a new generation addicted to nicotine.

Regardless, the company, which sells Marlboro and other brands outside of the U.S., is making a big bet on this new breed of products. In January, it said it would invest up to 500 million euros (\$688 million) in its first manufacturing facility to produce them, capable of making up to 30 billion units annually by 2016.

These kind of bets are particularly worth watching in the tobacco industry, whose core product is in long-term decline. Cigarettes kill their users by the millions and have turned their makers into corporate pariahs. In the long run, coming up with something new to sell is a matter of existential importance.

So when PMI's Chief Executive André Calantzopoulos recently told investors that reduced-risk products are "our greatest growth opportunity in the years to come, which we believe has the very real potential to transform the industry," he's talking about a transformation from decline to growth.

PMI's global sales volumes fell 5.1% in 2013, and sustained public health campaigns, combined with heavy taxes and marketing restrictions, means cigarette sales are unlikely to begin growing again in developed markets. If tobacco companies want to stay in business for the long term, it won't be through cigarettes alone.

There's still a long way to go before the growth Mr. Calantzopoulos is looking for can come true. The new devices don't even have a name—"reduced risk product" may be a sensible term when dealing with vigilant regulators, but it isn't going to work when selling to the public. What do you call something that isn't an e-cigarette as we currently know them, but isn't a regular cigarette either?

Once they come up with a name, selling to the public is an even trickier proposition. Not only will PMI need to convince regulators of any claim that the products are less dangerous than regular cigarettes, it will also need to get approval to promote them and explain how they work.

Right now, tobacco companies must tread carefully in speaking to the public, and cigarettes haven't been advertised on TV since 1971. Electronic cigarettes, which contain no tobacco, have much more leeway in advertising and promotion.

Even with all that done, PMI must then convince smokers to give these new smoke-free gadgets a chance. Surveys in the U.S. and Europe have shown that while more than half of smokers have tried an e-cigarette, few convert. Such is the powerful appeal of smoking to its addicts.

A study released last month by France's Observatory on Drugs and Addiction showed that while more than half of French smokers have tried an e-cigarette, just 3.3% went on to use them on a daily basis.

In trying to pull users toward something new, Big Tobacco will have to confront the very addiction it has spent decades creating.

See also:

E-Cigarettes Encounter Rising Heat – WSJ

The 'Incredible and Unprecedented' Chance to Make Nicotine Safer – Corporate Intelligence

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